

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

MDL No. 1:13-md-02419

Hon. F. Dennis Saylor, IV

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THIS DOCUMENT RELATES TO:

All Actions

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**RESPONSE TO REVISED CHART BY  
NON-PARTY ROCHESTER BRAIN & SPINE PAIN MANAGEMENT LLC**

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Non-Party Objector Rochester Brain & Spine Pain Management LLC ("RBS"), by its counsel Phillips Lytle LLP, submits this Response to the Chart filed by the Plaintiffs' Steering Committee ("PSC") on October 16, 2013 [Dkt. No. 514] ("Revised Chart") and states as follows:

1. Notwithstanding the filing of the Revised Chart, this filing preserves RBS' Objections [Dkt. No. 314] and Motion to Quash [Dkt. No. 358] against the Subpoena dated June 16, 2013, and the PSC's Revised Subpoena, dated September 27, 2013 [See Dkt. No. 464, Notice of Revised Subpoena]. A true and correct copy of RBS' Motion to Quash, which incorporates RBS' Objections, is attached for convenience as **Exhibit A**. RBS incorporates the Motion to Quash and Objections herein by reference.

2. RBS is not a party nor connected in any way to this litigation. The PSC has not identified any RBS patient who has filed suit, joined the MDL litigation, or filed a notice of claim relating to the use of any New England Compounding Center drug. Thus, none of RBS' materials are relevant to any claims of any party, and discovery of RBS' materials will not lead to the discovery of admissible evidence.

3. By correspondence dated September 27, 2013 (attached as **Exhibit B**), the PSC withdrew its request under the Subpoena for patient names and contact information. However, the Revised Subpoena's Requests Nos. 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 14, and 15 remain overly broad, unduly burdensome, and may be construed as impermissibly seeking protected health information ("PHI") in violation of New York and federal law, and is contrary to the Court's August 1, 2013 Order quashing Plaintiffs' request under the Subpoena for PHI. Thus, RBS retains its right to redact PHI from any document responsive to the above Requests under the Revised Subpoena.

4. Request No. 17 under the Revised Subpoena continues to seek materials, namely insurance policies, that are neither relevant to the subject matter of the parties' dispute nor reasonably calculated to lead to the discovery of admissible evidence. The PSC has failed to satisfy its burden of demonstrating the relevancy of the insurance policies sought

under Request No. 17, and therefore discovery of these materials should not be allowed. *Zoological Society of Buffalo, Inc. v. Carvedrock, LLC*, 2013 WL 5652759, at \*3 (W.D.N.Y. 2013)(quashing subpoena seeking insurance policy which would only be relevant if the insured prevailed in the underlying litigation); *see also Corbett v. eHome Credit Corp.*, 2010 WL 3023870, at \*2 (E.D.N.Y. 2010); *Kingsway Fin. Servs., Inc. v. Pricewaterhouse-Coopers LLP*, 2008 WL 4452134, at \*4 (S.D.N.Y. 2008).

5. Regarding the balance of the Requests under the Revised Subpoena, RBS expressly relies upon its previously submitted Objections and Motion to Quash.

Respectfully submitted,

Rochester Brain & Spine Pain Management LLC  
by their counsel,

/s/ Joanna J. Chen  
Alan J. Bozer, admitted *pro hac vice*  
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Dated: October 23, 2013

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**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Alan J. Bozer\_\_\_\_\_  
Alan J. Bozer